IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Bail Appl..No. 4607 of 2007(A)

(CRIME NO. 162/07 of KUNNAMANGALAM POLICE STATION)

PETITITONER/ACCUSED

ABDULSALAM,
S/O.AYAMMED KUTTY,
MUNDOT,P.O.MALAYAMMA, R.E.C., KOZHIKODE.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. JAI GEORGE, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 4607 of 2007

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Dated this the 30th day of July, 2007

ORDER

Application for anticipatory bail. About an incident which took place on 6.6.07 a case and a counter case were initially registered under Sec.324 IPC. But subsequently, consequent to alteration of the Section of offence, allegations under Section 326 IPC have been included after a period of one month. Investigation is in progress. Petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Investigator has ignored the plight of the petitioner even though the petitioner had suffered as many as five fractures. The Investigating Officer has not so far included allegations under Sec.326 IPC in the counter case. The petitioner apprehends that he may be arrested by the Investigating Officer now and treated unfairly. It is in these circumstances, prayed that directions under Section 438 Cr.P.C may be issued in his favour.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that total loss of hearing is the injury suffered by the victim and that allegation has been included subsequently in the course of investigation. The learned Public Prosecutor also submits that fracture is seen to have been suffered by the petitioner herein. But no explanation is offered as to why the said crime is registered only under Sec.324 IPC. Be that as it may. I am not persuaded that this is a fit case where directions under Sec.438 Cr.P.C. can be issued in favour of the petitioner. This is an eminently fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate and seek regular bail in the normal and ordinary course. The mere fact that the Investigating Officer has not so far included the allegations under Sec.326 IPC in the case in which the petitioner is the victim, by itself, is not a sufficient ground to invoke the powers under Sec.438 Cr.P.C. in favour of the petitioners. Of course the Investigating Officer ought to consider that aspect of the matter before submitting the final report.

4. In the result, this petition is dismissed. I may however, hasten to observe that if the petitioners appear before the Investigating Officer or the learned Magistrate and apply for bail,after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE